



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
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OAG 17-004

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Subject: Whether the Northern Kentucky Independent District Health Department may fund a chemical dependency program at the Campbell County Detention Center with revenue generated by a special ad valorem public health tax.

Requested by: Steven Franzen, Campbell County Attorney

Written by: Taylor Payne, Assistant Attorney General

Syllabus: The Northern Kentucky Independent District Health Department may fund a chemical dependency program because it is a public health program that will provide services for which a local health department is authorized to fund pursuant to KRS 212.240(2) and KRS 212.245.

Statutes construed: KRS 212.782; KRS 212.784; KRS 212.725; KRS 212.794; KRS 212.755; KRS 212.240; KRS 212.245; KRS 441.045; KRS 92.330; KRS 92.340; KRS 92.330

OAGs cited: OAG 76-753

Opinion of the Attorney General

Steven Franzen, Campbell County Attorney, has requested an opinion of this office on the issue of whether the Northern Kentucky Independent District Health Department may fund a chemical dependency program at the Campbell County Detention Center with revenue generated from a special ad valorem public health tax. We advise that the Health Department may fund the chemical dependency program because the Health Department is authorized to spend revenue generated by the special ad valorem public health tax on programs that aim to safeguard the public health of Campbell County.

Mr. Franzen informs this office that in May 2016, the Campbell County Fiscal Court requested the Health Department to fund a chemical dependency program that will provide voluntary treatment to women incarcerated at the Detention Center who suffer from substance use disorder, particularly the use of heroin. The program will offer services to twenty (20) to thirty (30) women who will be assessed and, depending upon need, complete a substance use disorder curriculum consisting primarily of counseling, coping and education. Participants will receive additional services from various community organizations upon leaving the Detention Center. The Detention Center will provide and pay for any necessary medical treatment for a participant with funds from the jail budget, rather than the funds of the Health Department. Mr. Franzen indicates that the goal of the program is to address the heroin epidemic and the spread of other diseases related to the use of heroin.

The Health Department is an independent district health department created under KRS 212.782. It is governed by the Northern Kentucky Independent District Board of Health and provides public health services in Boone, Grant, Kenton and Campbell Counties. *Northern Kentucky Independent District Health Department About Us Page*, <http://www.nkyhealth.org/About-Us.aspx> (last visited Feb. 28, 2017). Upon establishment, an independent district board of health assumes "all powers and duties of the previous district board of health and local boards of health, except as otherwise provided in KRS 212.780 to 212.794." KRS 212.784(1) and (2). Specifically, it has the power to raise funds in accordance with KRS 212.725, which permits the health board to impose a special ad valorem public health tax. KRS 212.794(1). Pursuant to KRS 212.725(1), any revenue generated by the special ad valorem public health tax must be "used solely for the maintenance and operation" of the independent department of health.

Operation of an independent department of health includes the department's duty to "formulate, promote, establish, and execute policies, plans, and programs to safeguard the health of the people of the county and establish, maintain, implement, promote, and conduct facilities and services for the purpose of protecting the public health." KRS 212.240(2). To carry out this duty, independent health departments may, "[c]ontract for services not otherwise available [from the Cabinet for Health and Family Services]; . . . [c]ooperate with

other health departments, agencies, and organizations in matters relating to public health; . . . or [e]xcept as otherwise provided by law, do all other things reasonably necessary to protect and improve the health of the people." KRS 212.245(2), (9) and (11).

In OAG 76-753, this office addressed whether a local board of health could transfer \$20,000 of revenue generated by a special ad valorem public health tax to the county hospital as a blanket appropriation for general operational costs of the hospital. This office interpreted the language in KRS 212.755(1) that the tax revenue be used "solely for the maintenance and operation of the county or city-county health department" as "narrow[ing] the use of the tax money to those expenditures within the statutorily authorized range of expenditure of a county board of health." *Id.* This office concluded that the expenditure of tax revenue as a blanket appropriation for operational costs did not fall within a statutorily authorized power or duty of local health boards. *Id.* As a result, this office advised that the blanket appropriation of tax revenue to the county hospital for operational costs would violate KRS 212.755(1). *Id.* However, this office further advised that, as an alternative to the blanket appropriation, a county health board could transfer tax funds to a county hospital if the funds were connected "with a contract providing for the furnishing, by such hospital, of public health program services, which services are statutorily authorized in the programming of the [local health board]." *Id.*

In our view of the matter at hand, the funds that the Health Department would provide to the Detention Center to create the chemical dependency program are comparable to funds provided to a county hospital to furnish public health program services. The chemical dependency program described by Mr. Franzen is a public health program that will provide health services of which the Health Department is statutorily authorized to establish and promote in accordance with KRS 212.240(1). Furthermore, the Health Department is statutorily authorized to contract services that are not otherwise provided by the Cabinet for Health and Family Services and to coordinate with other organizations to address matters of public health in accordance with KRS 212.245. Therefore, we advise that the Board of Health may provide revenue from a special ad valorem public health tax to the Detention Center for purposes of creating the chemical dependency program.

Mr. Franzen informs this office that the Board of Health has concern that the program may violate KRS 441.045(3), which requires that the Detention Center pay for "necessary medical, dental, and psychological care for indigent prisoners[.]" Necessary care is defined as "care of a nonelective nature that cannot be postponed until after the period of confinement without hazard to the life or health of the prisoner." KRS 441.045(10). Mr. Franzen further informs us that the chemical dependency program will provide elective care, rather than necessary care. Thus, the Detention Center would not violate KRS 441.045(3) by receiving funding for the chemical dependency program, because the program will not provide necessary care.

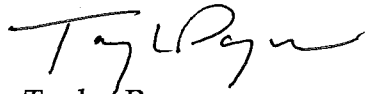
Mr. Franzen also informs this office that the Board of Health is concerned about the potential impact of *Sewell-Scheuermann v. Scalise*, 2014-CA-000915-MR, 2016 WL 1534636 (Ky. App. Apr. 15, 2016). There, the Court held that a city council member could be personally liable for diverting funds from a sanitation tax into the city's general fund. *Id.*, at *3. The Court addressed KRS 92.330 and KRS 92.340. *Id.* KRS 92.330 requires that taxes levied by a city of the home rule class must be levied by ordinance which states the purpose of the tax and that any revenue generated by the tax be expended for no other purpose than that for which the tax was levied. KRS 92.340 states that members of a city legislative body who voted for an expenditure are jointly and severally liable if the expenditure violates KRS 92.330. *Id.* The special ad valorem public health tax at issue here is authorized under KRS 212.725, which does not require the Board of Health to state the purpose of the tax, but only that the tax may be used only for maintenance and operation of the Health Department. *Sewell-Scheuermann* narrowly addresses the liability of members of a city legislative body under KRS 92.340. It does not recognize a private right of action against members of the Board of Health who expend revenue of the special ad valorem public health tax in violation of KRS 212.725(1). That is not to say such a right does not exist; we simply advise that *Sewell-Scheuermann* does not apply to the situation presented in this request.

Finally, Mr. Franzen has stated that the Board of Health is concerned that the chemical dependency program will only be available to inmates at the Detention Center and will provide additional services outside of the Detention Center. This office finds no provision in KRS Chapter 212 that would prevent the Health Department from funding a program that will only be available to inmates and

will provide additional services to inmates after the inmate has been released from incarceration. KRS Chapter 212 only requires that the program "safeguard the health of the people of the county" KRS 212.240(2).

In sum, this office advises that the Northern Kentucky Independent District Health Department may fund the chemical dependency program described by Mr. Franzen with revenue generated by the special ad valorem public health tax because the chemical dependency program constitutes a service which the Health Department is statutorily authorized to contract to provide pursuant to KRS 212.240 and KRS 212.245.

ANDY BESHEAR
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Taylor Payne", is written over the typed name.

Taylor Payne
Assistant Attorney General